

Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VICENTE CARRASCO FLORES, et
al.,

Plaintiffs,

V.

17 CV 6915 (LGS)

NYC PASTA AND RISOTTO CO. LCC,
et al.,

Defendants.

New York, N.Y.
September 7, 2018
9:15 a.m.

Before:

HON. LORNA G. SCHOFIELD,

District Judge

APPEARANCES

MICHAEL FAILLACE & ASSOCIATES PC
Attorneys for Plaintiffs
BY: COLIN J. MULHOLLAND
SARA ISAACSON

LEHMAN LAW GROUP LLC
Attorneys for Defendants
BY: BRIAN E. LEHMAN
JULIE B. SOLARZ

ALSO PRESENT:

Marcia Gotler, Spanish Interpreter
Jan Calloway, Spanish Interpreter

1 the meaning of the labor law. So that means only one issue
2 remains to decide whether the individual defendants were
3 plaintiffs' employers and you will have to answer that question
4 as to each of the employers of the plaintiff.

5 MR. LEHMAN: Agreed, your Honor. One minor point?

6 THE COURT: Yes.

7 MR. LEHMAN: To my ears each ease we are, you say they
8 assert that sounds like an affirmative defense, so I would
9 suggest maintain but if not --

10 THE COURT: If you're happy with "maintain", that's
11 fine.

12 MR. LEHMAN: There's no way they are not going to pick
13 that up.

14 THE COURT: Is that OK?

15 MR. MULHOLLAND: Yes, judge.

16 THE COURT: So that's what I'm going to tell them. So
17 the housekeeping issues are first that then I'll deal with the
18 two notes and then we'll continue with our witnesses.

19 Off the record.

20 (Discussion held)

21 THE COURT: Back on the record.

22 Since we're waiting I will give you a partial ruling
23 on the Rule 50 motion and I will deny it in part and reserve it
24 in part as follows:

25 As you know under Rule 50 the standard is whether a

1 reasonable jury would have a legally sufficient evidentiary
2 basis to find for the party on that issue and if that
3 evidentiary basis is insufficient the Court may resolve the
4 issue against the party.

5 So you have asked me, Mr. Lehman, for defendants to
6 resolve the issue of whether the individual defendants were
7 employers of the individual plaintiffs and you've essentially
8 alleged that the evidence was insufficient so that no
9 reasonable jury could find that. So my partial ruling is as
10 follows:

11 First, as to defendant Sharma, the evidence even as it
12 has proceeded thus far as sufficient for a reasonable jury to
13 conclude that he was plaintiff Mukhina's employer. First, the
14 evidence showed that he's a 50 percent owner of the business.
15 When problems with payments occurred Ms. Mukhina's co-workers
16 directed her to Mr. Sharma. Mr. Sharma communicated by text
17 message about delays in payroll payments. Ms. Mukhina was
18 provided with blank checks to be used for her payroll signed by
19 Mr. Sharma. She testified that Mr. Sharma personally
20 instructed her how to fill them out and when to deposit them.
21 And we saw physically had evidence that some payroll checks
22 were signed by Mr. Sharma.

23 As you know I have to construe the evidence and make
24 inferences. Contrary to the nonparties I am going to assume
25 for this purpose that all of that evidence is believed by the

1 jury and all inferences drawn in favor of plaintiff and
2 therefore, deny the motion as to defendant Sharma and plaintiff
3 Mukhina.

4 Second, with regard to defendant Sharma, again,
5 evidence I find was sufficient for a reasonable jury to
6 conclude that he was plaintiff Carrasco's employer. The
7 evidence, of course, is much thinner there but although, there
8 was no evidence offered to support the inference directly as to
9 Mr. Carrasco, drawing all inferences in his favor as to the
10 nonmoving party a reasonable jury could infer from the evidence
11 presented through Ms. Mukhina that Mr. Sharma was significantly
12 involved generally in employee payroll issues.

13 So I deny the motion as to Mr. Sharma and
14 Mr. Carrasco.

15 Finally, I deny the motion as to defendant Montoya and
16 plaintiff Carrasco. The evidence was sufficient for a
17 reasonable jury to conclude that defendant Montoya was
18 plaintiff Carrasco's employer. The evidence showed that
19 Mr. Montoya gave Mr. Carrasco his schedule, that Mr. Montoya
20 gave Mr. Carrasco orders and assignments everyday, that
21 Mr. Montoya and that those included that Mr. Carrasco's shift
22 was finished after he cleaned the stoves and the floor and that
23 Mr. Montoya sometimes castigated or disciplined Mr. Carrasco.

24 Again, drawing all inferences in favor of the
25 nonmoving party, Mr. Carrasco therefore, assuming that all that